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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Hector Olivas

Serial No: 10/828,808

Filed: 4/21/2004

For: Holding Tank Drain Plug

Examiner: James Pilkington

Office Action Dated 6/22/2007

REMARKS

35 U.S.C. 121
Rejections

In regards to claims rejected under 35 USC § 121, the applicant cites Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 54 USPQ2d 1299, 1305 (Fed. Cir. 2000) In this case, the court stated “A process and apparatus (tool) for its practice can be restricted if either “the process as claimed can be practiced by another materially different apparatus or by hand” or “the apparatus as claimed can be used to practice another and materially different process.”

The examiner has asked the applicant to select between Species I (Figures 1-2A) and Species II (Figure 4). However, Species I and Species II are essentially the same. The difference between the two species is that in species I the notch in plug is closed and in species II the notch is open. However, the apparatus as claimed cannot be used to practice another materially different process. It is not clear from the restriction made by the examiner what materially different process can be practice between the two different

species. The upper end 15 of both plugs is adapted to engage into the existing drain of a holding tank. The open versus the closed notch does not change how the invention is practiced.

In the alternative the applicant chooses species II. However, the applicant reserves the right to reclaim species I in the prosecution of the application. Additionally, the applicant will claim the entire invention except for the closed notch as disclosed in species I including the holes designated as 55 and 47. Applicant is requesting a telephonic hearing if there are any other issues regarding this application.

Respectfully submitted:



Delphine M. James

Registration No. 45,960
Delphine M. James, Attorney At Law
2656 South Loop West Suite 170
Houston, TX 77054
(713)-661-4144
(Fax) 713-661-4145

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Dr or Atty James

281-482-7210

p.3

CERTIFICATE OF TRANSMISSION

**I, Delphine James, hereby certify that the foregoing Response to the Office
Action is being transmitted by Facsimile to 571-273-8300.**

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Delphine James